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IN THE
SUPREME COURT OF THE UNITED STATES

KELLY A. AYOTTE, Attorney General of the State of New Hampshire, in her official capacity,
Petitioner,

— v. —

PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND, CONCORD FEMINIST HEALTH CENTER, FEMINIST HEALTH CENTER OF PORTSMOUTH, AND WAYNE GOLDNER, M.D.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF *AMICI CURIAE* CENTER FOR REPRODUCTIVE RIGHTS AND 30 ORGANIZATIONS COMMITTED TO PRESERVING THE CONSTITUTIONAL RIGHT TO ABORTION, IN SUPPORT OF RESPONDENTS

(List of *Amici Curiae* on inside cover)

SANFORD M. COHEN
(*Attorney of Record*)
SIMON HELLER
PRISCILLA SMITH
CENTER FOR REPRODUCTIVE RIGHTS
120 WALL STREET, 14TH FLOOR
NEW YORK, NY 10005
(917) 637-3600
Attorneys for Amici Curiae

October 12, 2005

AMICI CURIAE

Abortion Access Project
American Jewish Congress
Asian Communities for Reproductive Justice
Association of Reproductive Health Professionals
Atlanta Women's Medical Center
California Women Lawyers
Center for Reproductive Rights
Cherry Hill Women's Center
Choice USA
Family Planning Association of Maine
Guttmacher Institute
Hartford GYN Center
Institute for Reproductive Health Access
Law Students for Choice
MADRE
Medical Students for Choice
National Abortion Federation
National Association of Women Lawyers
National Coalition of Abortion Providers
National Family Planning & Reproductive Health Association
National Latina Institute for Reproductive Health
National Network of Abortion Funds
National Partnership for Women & Families
National Women's Law Center
Native American Women's Health Education Resource Center
Northeast Women's Center
Philadelphia Women's Center
Physicians for Reproductive Choice and Health
ProKanDo
Sexuality Information and Education Council of the United States
Women Lawyers Association of Los Angeles

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae are organizations committed to improving access to reproductive health care and specifically to securing constitutional protections for the right to choose abortion. Individual statements of interest of the *amici* are contained in the Appendix to this brief.[1]

SUMMARY OF ARGUMENT

The New Hampshire statute at issue in this case imposes notification requirements and a forty-eight hour waiting period on pregnant minors who choose abortion. It provides no exception from those requirements when a medical emergency threatens a young woman's health, even though the delays typically involved in meeting those requirements can exacerbate health threats. See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 880 (1992) (discussing emergency conditions that can lead to substantial and irreversible health consequences).

Relying on *United States v. Salerno*, 481 U.S. 739 (1987), New Hampshire, the United States and several amici contend that limitations on federal judicial power and separation of powers considerations rule out pre-enforcement constitutional challenges seeking facial invalidation of restrictions on abortion. They argue that federal courts are powerless to remedy the defect in the Act until young women come before the courts with actual health-threatening

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[1] The parties' letters consenting to the filing of this brief have been filed with the Clerk of the Court. Counsel for the *amici curiae* authored this brief in its entirety. No person or entity other than *amici* and their counsel made a monetary contribution to the preparation of this brief.

medical emergencies seeking as-applied injunctive relief.[2] (Brief of Petitioner ("Pet. Br.") at 41-42; see also Brief for the United States as Amicus Curiae Supporting Petitioner ("U.S. Br.") at 24.) They also argue by extension that this Court's well-established jurisdiction recognizing third party standing in, *inter alia*, cases involving the right to privacy generally and the right to abortion specifically should be scuttled.

These contentions ignore that this Court has recognized that physicians have standing to represent the interest of their patients seeking abortions and has allowed pre-enforcement challenges to, and granted facial invalidation of, abortion restrictions on numerous occasions. Throughout its jurisprudence in the area, this Court has paid careful attention to the appropriate limitations on judicial power while also taking seriously its duty to protect individuals from irreparable harm to their health and constitutional rights. The Court's careful balance between these two constitutional

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[2] The terms "pre-enforcement," "facial," and "as-applied" are used with different meanings in different contexts. Here we use "pre-enforcement" to mean prior to a statute's effective date, *i.e.*, before the statute can be enforced and before compliance with a statute can be demanded. We use both "facial" and "as-applied" in two senses. A statute has a "facial defect" if, by its very words, it is at odds with the Constitution. Thus, a statute requiring parental consent for abortions obtained by minors that contains no judicial bypass mechanism whatsoever and therefore delegates an absolute veto power to parents contains a "facial defect." *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 72-75 (1976). By contrast, a statute may be unconstitutional "as applied" even if it contains no "facial defect" because the manner in which the government has enforced or plans to enforce the statute violates the Constitution. A second sense of "facial" and "as-applied" relates to the remedy fashioned by the court: "facial invalidation" means that the government is entirely barred from enforcing a statute, while "as-applied invalidation" means that the government is not barred from enforcing a statute in its entirety, but only in certain circumstances or as to certain individuals or groups of individuals.

cornerstones has been vital to protecting women's health, as well as the right of each American woman to have some control over her destiny by deciding herself when, and if, she will bear a child.

ARGUMENT

I. Facial Invalidation of Unconstitutional Statutes in Pre-enforcement Challenges is Necessary to Protect Women's Health and Their Rights.

This Court's willingness to allow women to bring pre-enforcement facial challenges to unconstitutional abortion restrictions and to grant facial injunctive relief has been essential to protect against the chill on the provision of abortion services that would otherwise result and ultimately to insure that women do not have to suffer harm before obtaining relief.

A. The "No Set of Circumstances" Rule Is Not the Standard For Facial Invalidation of All Unconstitutional Statutes.

Contrary to the contentions of the State and United States, the "no set of circumstances" rule has not been the standard litigants must meet in order to succeed in invalidating an unconstitutional statute on its face. In *Sabri v. United States*, 541 U.S. 600, 124 S. Ct. 1941, 1948 (2004), the Court noted that it has "recognized the validity of facial attacks alleging overbreadth (though not necessarily using that term)" in several settings, including free speech and abortion cases.

This Court has granted facial injunctive relief on numerous occasions outside the abortion context without requiring that the statute be unconstitutional in every conceivable application. *See, e.g., City of Chicago v. Morales*, 527 U.S. 41, 41 (1999) (finding unconstitutionally vague a municipal ordinance empowering police to arrest

persons in violation of order to disperse given to gang members loitering on public streets); *id.* at 69 (Kennedy, J. concurring) ("As interpreted by the Illinois Supreme Court, the Chicago ordinance would reach a broad range of innocent conduct."); *Kolender v. Lawson*, 461 U.S. 352, 358 n.8 (1983) (facially invalidating statute requiring persons validly stopped by police to provide "credible and reliable" identification, and explaining that the vagueness doctrine permits a "facial challenge if the law reaches 'a substantial amount of constitutionally protected conduct'") (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 394 (1982)); *Louisiana v. United States*, 380 U.S.145, 150 (1965) (facially invalidating state law requiring a person seeking to register to vote to satisfy registrar that he could understand a constitutional provision because the grant of discretion to officials chilled African-Americans from seeking to register); *Aptheker v. Secretary of State*, 378 U.S. 500, 514 (1964) (facially invalidating statute prohibiting members of Communist registered organizations from obtaining passport as violating the right to travel because it "swe[pt] too widely and too indiscriminately").

Similarly, this Court has regularly invalidated statutes restricting abortion on their face, starting with the statute at issue in *Roe*, even where there are some circumstances in which they could be applied constitutionally. In *Roe v. Wade*, 40 U.S. 113 (1973), the Court struck down a Texas statute that allowed abortion only to preserve the woman's life, even though that statute was plainly amenable to constitutional applications in some cases. *See Janklow v. Planned Parenthood, Sioux Falls Clinic*, 517 U.S. 1174, 1178 (1976) (Scalia, J., dissenting from the denial of petition for certiorari) (noting that the Court "seemingly employ[ed] an overbreadth approach in *Roe v. Wade*"). The Court has also granted facial injunctive relief to strike down the Georgia statute requiring in-hospital abortions and committee review that was held unconstitutional in *Doe v. Bolton*, 410

U.S. 179 (1973); the statute requiring two-physician approval that was enjoined in *Thornburgh v. Am. Coll. of Obstetricians and Gynecologists*, 476 U.S. 747 (1986); the parental involvement statutes that were enjoined in *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416 (1983), *overruled in part on other grounds by Casey*, 505 U.S. at 881-82, 884-85 (1992), and *Bellotti v. Baird*, 443 U.S. 622 (1979) (*Bellotti II*") (plurality opinion); statutes requiring second trimester abortions be performed in hospitals in *City of Akron*, 462 U.S. at 434-39, and *Planned Parenthood Ass'n of Kansas City, Mo. v. Ashcroft*, 462 U.S. 476 (1983); and Pennsylvania's spousal notification statute struck down in *Casey*, 505 U.S. at 893-95, even though all were amenable to some constitutional applications. Any lingering question that the *Salerno* rule remained applicable in third-party facial challenges to abortion statutes was resolved in the negative when *Casey* held facially unconstitutional part of a statute that presented a "substantial obstacle" to exercise of a woman's right to choose abortion in a "large fraction" of cases, 505 U.S. at 895, even though there clearly were constitutional applications.

B. Adoption of the State's *Salerno* Rule Would Threaten Women's Health and Would Chill the Provision of Abortions.

Two important concerns have led the Court to grant injunctive relief invalidating on their face statutes restricting abortion. The decision to terminate a pregnancy is cloaked with physical and mental health consequences. *Casey*, 505 U.S. at 880 (*Roe v. Wade* "forbids a State to interfere with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health"). If statutes were not invalidated on their face and, instead, each woman was required to bring individual as-applied challenges, women would suffer harm to their health and rights in two ways.

First, if an individual as-applied challenge becomes the sole means of vindicating abortion rights, the delays that regularly occur in our adversarial legal system[3] would threaten to harm women's health even where there is not medical emergency. *See, e.g., Wynn v. Carey*, 582 F.2d 1375, 1389 n.29 (7th Cir. 1978) ("Speed is critical in the abortion context.").[4] Of course, in a medical emergency, when a patient needs treatment *without* delay, a judicial bypass is never adequate. The process of obtaining as-applied constitutional relief from the federal court system is simply not fast enough to protect women from worsening and harmful medical conditions.[5] *See Thornburgh*, 476 U.S. at 769-72 (striking second physician requirement because delay in finding second physician would put woman's health at

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[3] Such delays include the potential for an order, which can be in effect for months, issued by a single Circuit Judge staying a lower court injunction in favor of a plaintiff. *Richmond Med Ctr. for Women v. Gilmore*, 144 F.3d 326 (4th Cir. 1998) (Luttig, J., single Judge), *granting stay of* 11 F. Supp. 2d 795 (E.D. Va. 1998).

[4] Even where the constitutional right to have an abortion is well-established, a zealous adversary may succeed in temporarily blocking a woman's access to abortion for a significant period of time. *See. e.g.*, Marie McCullough, *Court Injunction Halts Pa. Woman's Abortion*, Philadelphia Inquirer, August 2, 2002, at B-1.

[5] There is an enormous difference between requiring a minor to seek a judicial bypass in a non-emergency situation and forcing any woman to seek a judicial ruling on the constitutionality of a law that would deny her an abortion. (*Cf* U.S. Br. at 14 n5.) For example, in a judicial bypass: 1) the minor is not bringing complex constitutional claims based on complicated medical testimony in a challenge to state legislation, but instead goes to court to prove that she is mature and that the abortion is in her best interests in accordance with a statutory scheme; 2) the minor has an appointed lawyer; 3) the minor has no adversary; 4) there is a statutory scheme protecting the minor's confidentiality and the expeditiousness of the process. As daunting as judicial bypass procedures can be, *see Hodgson v. Minnesota*, 497 U.S. 417, 441-42 & nn. 29 &30 (1990), a constitutional challenge is much more difficult and time consuming.

risk); *Monmouth County Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 353 (3d Cir. 1987) (Mansmann, J., concurring) (in case involving inmates' access to abortion services, noting that "there is apparently no procedure for expediting an application for court-ordered release in order to avoid [the delay which will] increase[] the risk of unavailability and danger from abortion"); *Wynn v. Carey*, 582 F.2d at 1389 n.29 ("Speed is critical in the abortion context.").

Second, if the only limitation on enforcement of abortion restrictions comes from a collection of as-applied rulings, physicians and their patients will continue to be chilled unless as-applied rulings apply to them without a doubt. As-applied injunctive relief simply does not give doctors and women the safe harbor they need. At the boundaries, any as-applied relief is somewhat unclear: does as-applied relief exempting "battered women" from a spousal notice statute exempt a woman who was beaten once by her husband, or only one who is beaten regularly by her husband. *Cf. Casey*, 505 U.S. at 895 (enjoining spousal notice on its face).[6] Does as-applied relief allowing women who cannot afford a hospital-based abortion to obtain second-trimester abortions outside hospitals require the physician to audit the women's financial assets as a precondition to performing an outpatient

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[6] In *Casey*, the Court recognized that a chilling effect would occur if the spousal notice requirement remained in effect. 505 U.S. at 894 ("the significant number of women who fear for their safety . . . are likely to be deterred from procuring an abortion as surely as if the Commonwealth had outlawed abortion in all cases."); *see also id.* at 897 ("Whether the prospect of notification itself deters such women from seeking abortions, or whether the husband . . . prevents his wife from obtaining an abortion until it is too late, the notice requirement will often be tantamount to the veto held unconstitutional in *Danforth* [428 U.S. 52]."). If each woman had been forced to proceed piecemeal and obtain an injunction based on the level of abuse in her individual circumstances, this chilling effect would have prevented other women from obtaining relief.

abortion? Does as-applied relief allowing a woman with preeclampsia to avoid an abortion restriction such as a mandatory delay law or parental notice requirement apply to another health condition?

There is little doubt that, no matter how skilled the drafting of an injunction against enforcement of a restriction with respect to a particular condition or category of conditions or defining a class of pregnant women, sufficient uncertainty about coverage will remain either to require additional litigation or chill the exercise of the right to an abortion. In each instance, the inherent vagueness of as-applied relief will cause women (and their physicians) to "steer far wider of the unlawful zone" than if the statute is facially invalid and the "State must bear the[] burden[]," *Speiser v. Randall*, 357 U.S. 513, 526 (1958), of enacting a new statute that respects constitutional rights.[7] *See also Stenberg v. Carhart*, 530 U.S. 914, 945-46 (2000)(facially invalidating statute because its broad ban would chill doctors from performing "the commonly used method for performing previability second trimester abortions," and noting that "[a]ll those who perform abortion procedures using that method must fear prosecution, conviction and imprisonment"); *Fargo Women's Health Org. v. Schafer*, 507 U.S. 1013 (1993) (O'Connor, J., joined by Souter, J., concurring in denial of application to vacate stay) (*Salerno*'s "no set of circumstances" requirement "is inconsistent with *Casey*").

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[7] To make the relief clear would require courts to draft complicated and detailed schemes, rewriting the statutes in detail, an exercise that is clearly better left to legislatures. *See Salinas v. United States*, 522 U.S. 52, 59-60 (1997) ("Statutes should be construed to avoid constitutional questions, but this interpretative canon is not a license for the judiciary to rewrite language enacted by the legislature.") (quoting *United States v. Albertini*, 472 U.S. 675, 680 (1985)); *Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 397 (1988) ("[W]e will not rewrite a state law to conform it to constitutional requirements.").

Only facial invalidation of a restriction can prevent irreparable harm to women.

The same reasons that support a broad remedy for unconstitutional abortion restrictions also counsel for allowing physicians and their patients to determine the scope of their rights *before* a statute takes effect and before they have been subjected to the chilling effect of an unconstitutional statute. This Court has repeatedly approved relief granted in pre-enforcement challenges to laws burdening women's access to abortion. *See Stenberg*, 530 U.S. at 945-46 (in pre-enforcement challenge to statute criminalizing certain abortion procedures, finding statute "unconstitutional"); *Casey*, 505 U.S. at 845 (in pre-enforcement challenge to husband consent requirement, finding statute unconstitutional).[8]

If physicians and their patients are forced to wait until after a statute takes effect, doctors will hesitate in providing treatment with the result that the health of their patients will

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[8] *See also Hodgson v. Minnesota*, 497 U.S. at 450-55 (in pre-enforcement challenge to provision requiring notice to two parents of a minor's abortion, in the absence of an alternative means to obtain authorization for the abortion, finding statute unconstitutional); *Thornburgh*, 476 U.S. at 753 (in pre-enforcement challenge to omnibus abortion control act, finding numerous provisions of statute unconstitutional); *Planned Parenthood v. Ashcroft*, 462 U.S. at 481-82 (in pre-enforcement challenge to requirement that abortions after twelve weeks be performed in hospitals, finding statute unconstitutional); *City of Akron*, 462 U.S. at 425, 452 (in pre-enforcement challenge, numerous provisions of omnibus municipal ordinance regulating abortion held unconstitutional); *Bellotti II*, 443 U.S. at 651 (in pre-enforcement challenge to statute requiring parental consent for abortion, affirming judgment barring enforcement of statute "in any fashion," *Baird v. Bellotti*, 393 F. Supp. 847, 857 (D. Mass. 1975) (three-judge court)); *Colautti v. Franklin*, 439 U.S. 379 (1979) (in pre-enforcement challenge, finding "standard of care" requirements in performing abortions unconstitutional); *Danforth*, 428 U.S. at 75, 78-79, 83-84 (in pre-enforcement challenge to omnibus abortion statute, finding several provisions unconstitutional).

be damaged. For example, when a physician with a patient suffering from preeclampsia hesitates because of an unconstitutional statute, his or her patient is at risk of developing eclampsia at great risk to her health and then her life. Allowing pre-enforcement challenges, rather than forcing a physician to wait until the brink of medical tragedy to bring a lawsuit, avoids putting the physician in the position of simultaneously managing a very sick patient and litigating and giving testimony in a constitutional challenge. It also allows the courts to engage in a more deliberate examination of the constitutional challenge.

Nevertheless, New Hampshire and several of its *amici* argue that pre-enforcement relief is unavailable. As described above, the State contends that the courthouse doors are open only on an as-applied basis to a "flesh-and-blood" individual already experiencing a medical emergency. The United States describes its position as an objection to pre-enforcement *facial* challenges to abortion statutes. Although the United States asserts that it would allow the bringing of pre-enforcement challenges "on an as-applied basis before irreparable injury has actually been suffered," it then undercuts its own position in the next breath, stating that ripeness issues may arise, making such relief *un*available. (U.S. Br. at 15-16 & n.6.) Taken together, these arguments urge the Court to limit radically women's ability to vindicate their constitutional right to privacy.

C. Adoption of the State's *Salerno* Rule Will Flood the Federal Courts with Litigation and Thwart Women's Exercise of Their Privacy Rights

Those who argue that the *Salerno* rule applies in cases like this one seek to undermine *Roe v. Wade* and would replace the Court's typical facial invalidation of unconstitutional abortion statutes with a scheme in which the federal courts will sit as standing abortion review

committees, reviewing unconstitutional applications of statutes on a piecemeal basis. If women are prohibited from bringing pre-enforcement facial challenges to statutes restricting abortion, the Judiciary will be forced to grapple with an endless stream of "as-applied" challenges to those statutes.

While facial invalidation forces legislatures to repair facial defects in statutes, *barring* facial invalidation forces the *courts* to repair those facial defects one woman at a time. For example, if facial relief were not available for a statute requiring all second-trimester abortions to be performed in a general hospital, *cf. City of Akron*, 462 U.S. at 434-39, each woman seeking an abortion at a non-hospital facility would be forced to sue, alleging that this requirement, as applied to her, constituted a substantial obstacle (because of cost and lack of availability of hospital-based abortions, *see id.* at 434-35) and did not advance the state's interest in maternal health (because the specifics of her medical condition rendered an abortion at a non-hospital facility at least as safe, *see id.* at 435-37). Class-based relief would be difficult to fashion, and whether a particular woman is actually in the class(es) exempted from the statute would itself be subject to litigation.

D. *Casey*'s "Large Fraction" Analysis, along with its Rejection of the *Salerno* Standard, Is Not Limited to Spousal Notification Provisions.

Casey's "large fraction" analysis struck a careful balance between invalidating a statute on its face "based upon a worst-case analysis that may never occur," *see Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 515 (1991), and allowing a statute to stand that – it has been proven – will harm "many" women and is "likely to prevent a significant number of women from obtaining an abortion," *Casey*, 505 U.S. at 893. By applying the large fraction test, the Court assured itself that it was not overreaching, but was rather

invalidating only the restriction that posed serious risks of real harm to real women. *Cf. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 581 (1992) (Kennedy, J., concurring) (discussing importance of "confin[ing] the Judicial Branch to its proper, limited role in the constitutional framework of Government").

The joint opinion's large fraction analysis was a response to the State's effort to minimize the burdens of the law by noting that many women would *not* be affected by the provision, essentially the same argument proffered by the State here.[9] The Court held that the fact that some women would *not* be harmed by the restriction did not warrant putting a "significant number" at risk by denying facial relief as the State advocated. *Casey*, 505 U.S. at 893. Simply put, the Court's continued willingness to strike this careful balance is necessary to protect women from restrictions that otherwise would, as outlined above, cause real harm.

The State and the United States now argue that *Casey*'s rejection of *Salerno* is tie[illegible]nly to the "large fraction" analysis and that the "large fraction" analysis — and thus the rejection of *Salerno* — is applicable only to the spousal notification provisions. (Pet. Br. at 36-37; U.S. Br. at 16-18.) This is incorrect and largely beside the point.

First, the Court's rejection of the *Salerno* standard in *Casey* was not limited to the invalidation of the spousal notification provision. The Court also did not apply *Salerno* in evaluating whether the medical emergency provision was inadequate, nor in its evaluation of the burdens imposed by the waiting period, even though both of those provisions clearly had some constitutional applications. *Supra* at 6-7. If the Court had applied *Salerno*, the rest of its explanation for

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[9] The State had argued that the spousal notification provision should be upheld because "it imposes almost no burden at all for the vast majority of women seeking abortions." 505 U.S. at 894.

upholding these provisions would have been completely unnecessary.

Second, the large fraction analysis itself is simply not limited to spousal notification provisions.[10] It was not discussed with regard to the waiting period in *Casey* because the Court held that the waiting period did not burden *any* women unduly.[11] A zero in the numerator makes any

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[10] *See Planned Parenthood of Southeastern Pa. v. Casey*, 510 U.S. 1309, 1310 (1994) (Souter, Circuit Justice) (in challenges to waiting period statutes in states other than Pennsylvania, courts should employ "large fraction" analysis); *Fargo Women's Health Org. v. Schafer*, 507 U.S. 1013 (O'Connor, J., joined by Souter, J., concurring in denial of application to vacate stay) (lower court, in evaluating constitutionality of North Dakota statute requiring waiting period before abortion, should have applied "the same analysis" employed by joint opinion in *Casey*, specifically "large fraction" analysis; "we made clear that a law restricting abortions constitutes an undue burden, and hence is invalid, if, 'in a large fraction of the cases in which [the law] is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion.'") (quoting *Casey*, 505 U.S. at 895) (alteration in original).

[11] The United States's claim that the joint opinion "expressly noted . . . that the same method of analysis would not apply to parental-notification and parental-consent provisions" (U.S. Br. at 17) (citing *Casey*, 505 U.S. at 895) is simply untrue. In the portion of the opinion that they cite, the Court distinguishes generally between spousal notice requirements imposed on adult women and parental notice and consent requirements imposed on "children." The distinction has nothing to do with the fraction of women being burdened; rather, as explained by the Court, the distinction is based on what the Court describes as its "quite reasonable assumption that minors will benefit from parental consultation," and its conclusion that a "parallel assumption" cannot be adopted with regard to adult women and their spouses. 505 U.S. at 895. In other words, it is not that parental involvement laws impose a substantial obstacle on a large fraction of the "children" involved and the Court does not care. Rather, it is that the Court does not believe that minors will be burdened as long as the alternative mechanism exists.

fraction zero no matter what the denominator.[12]

It is true that the "large fraction" analysis was not applied by the Court in evaluating whether the Pennsylvania Abortion Control Act at issue in *Casey* and the abortion method ban at issue in *Stenberg* adequately protected women's health.[13] In these cases, the Court has applied an alternative test and examined whether the restrictions "impose[] a *real* health risk." *See Casey*, 505 U.S. at 887 (emphasis added). While in *Casey*, the Court held that the lower court's interpretation of the medical emergency exception prevented that real risk, in *Stenberg* the Court held that "tragic health consequences" would result because the statute contained no exception whatsoever. *See Casey*, 505 U.S. at 880-81; *Stenberg*, 530 U.S. at 937-38.

Importantly, the State's claim that the "large fraction" analysis is limited to spousal notification provisions is also inconsistent with the stated goal of the joint opinion, to "set forth a standard of general application to which we intend to adhere." *Casey*, 505 U.S. at 876. The opinion speaks in general terms when it observes that "Legislation" — not spousal notification legislation — "is measured for consistency with the Constitution by its impact on those whose conduct it affects. . . The proper focus of constitutional inquiry" — not constitutional inquiry regarding spousal notification — "is the group for whom the

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[12] In fact, the lower federal courts have appropriately used the "large fraction" analysis to adjudicate the constitutionality of abortion restrictions. *See, e.g., A Woman's Choice v. Newman*, 305 F.3d 684, 699 (7th Cir. 2002) (upholding waiting period after determining that it would not have "the direct effect of preventing a 'large fraction' of . . . women from obtaining abortions.").

[13] This is why the large fraction analysis is not mentioned by the Court in *Stenberg v. Carhart*, 530 U.S. 914, not because it is inapplicable to any other types of provisions. (*Cf.* Pet. Br. at 36-37; *see also* U.S. Br. at 16-17.)

law is a restriction, not the group for whom the law is irrelevant." 505 U.S. at 894.

II. Third-party Standing is Critical to the Protection of Women's Privacy Rights.

The United States seems to acknowledge the appropriateness of, as well as the necessity for, this Court's many decisions implicitly and explicitly recognizing that "abortion clinics and doctors who perform abortion 'routinely have *jus tertii* standing' to assert the rights of women whose access to abortion is restricted." (U.S. Br. at 15-16 (citing cases) (noting that such standing is available "to the extent that a woman may be deterred from bringing" a lawsuit to challenge restrictions on her right to abortion).)

The State, by contrast, takes a swipe at third party standing in this context, pointing to the uncontroversial premise that the federal courts' power to declare statutes unconstitutional lies in the "duty of those courts to decide cases and controversies properly before them" (Pet. Br. at 30) (quoting *United States v. Raines*, 362 U.S. 17, 20 (1960)), the rule that "gives rise to the rule barring third party standing." (*Id.*) The State ignores that, particularly in cases involving restrictions on privacy, including state regulations on women's access to safe, legal abortion procedures, this Court has endorsed the assertion of constitutional claims by parties other than those whose rights have been directly infringed. Disregarding the compelling reasons that the Court has identified for permitting third-party standing in the context of abortion litigation and elsewhere, the State asks the Court to jettison its decades-long jurisprudence.[14]

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[14] Notably, both the State and the United States acknowledge the importance of third party standing and rely on it in response to other objections. (*See* Pet. Br. at 41-42; U.S. Br. at 15-16.)

A. Acceptance of the State's Arguments Would Require the Court to Abandon Its Third-party Standing Doctrine.

Third-party standing to challenge statutory intrusions on privacy rights has a well-honored place in our constitutional jurisprudence. Eighty years ago, in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), private and parochial schools were accorded standing to seek an injunction against enforcement of a state law in order to preserve the constitutional rights of parents who were not party to the suit. *Id.* at 536. As this Court later explained, in *Pierce*, "the schools were permitted to assert in defense of their property rights [the] constitutional rights of the parents and guardians." *Barrows v. Jackson*, 346 U.S. 249, 257 (1953).

Petitioner's heavy reliance on *United States v. Raines*, 362 U.S. 17 (1960), is misplaced. In *Raines*, the Court recognized that the rules it followed "are not principles ordained by the Constitution, but constitute rather 'rule[s] of practice,' . . . albeit weighty ones," *id.* (quoting *Barrows v. Jackson*, 346 U.S. 249), and acknowledged that third party standing was a proper exception to those rules. *Raines*, 362 U.S. at 22 (discussing proper "exceptions to [these rules] where there are weighty countervailing policies") (citing *NAACP v. Alabama*, 357 U.S. 449, 459-60 (1958)). Moreover, that was a case where defendants, local officials, attempted to avoid application of a civil rights statute, by arguing that the statute was unconstitutional because it could also be applied to private parties. The Court noted that "none of the countervailing considerations" justifying third party standing in other cases was present there. *Id.* at 23.

Barrows v. Jackson, of course, is one of this Court's earliest acknowledgments that there are indeed occasions when a party before the courts may assert the constitutional rights of persons not present. *Barrows*, 346 U.S. at 251, 259-60 (relationship between seller of property and purchasers "is

so close to the purpose of the restrictive covenant, to violate the constitutional rights of those discriminated against, that respondent is the only effective adversary of the unworthy covenant in its last stand."). In the years since *Barrows*, the Court has repeatedly reaffirmed the legitimacy of third-party standing to vindicate a variety of constitutional rights. *E.g.*, *Campbell v. Louisiana*, 523 U.S. 392, 397-400 (1998) (white defendant had standing to assert constitutional rights of Black jurors excluded from grand jury that issued indictment); *Powers v. Ohio*, 499 U.S. 400, 410-16 (1991) (white defendant had standing to assert constitutional claims of African-American persons excluded from petit jury service by racially discriminatory peremptory challenges); *Craig v. Boren*, 429 U.S. 190, 456-57 (1976) (beer vendor had third-party standing to assert constitutional rights of young males prohibited from purchasing beer under gender-based classification). As summarized in *Powers*, a litigant has the right to assert the constitutional rights of third parties when the litigant has "suffered injury in fact," has "a close relation to the third-party," and there "exist[s] some hindrance to the third-party's ability to protect his or her own interests." 499 U.S. at 411.

B. Third-party Standing Should Remain Available to Vindicate Women's Privacy Rights.

Based on the factors discussed above, the Court in *Singleton v. Wulff* determined that physicians have standing to assert the rights of women patients seeking abortions. First, the Court found that the closeness of the relationship between physician and patient "is patent." *Singleton v. Wulff*, 428 U.S. 106, 117-18 (1976) (physicians who provide abortions have standing to assert privacy rights of women patients). A woman's exercise of her right to seek an abortion is "inextricably bound up with the activity" the physician seeks to pursue. *Id.* at 114. Second, the Court noted that there are several obstacles to the woman's

assertion of her own rights. *Id.* at 117. Due to privacy concerns, the woman might be chilled from asserting her own right to an abortion in a court case. *Id.* In addition, the time-sensitive nature of abortion means that the woman's claim would be subject to becoming moot rapidly. *Id.* Accordingly, the Court held that physicians could challenge an abortion funding restriction on behalf of their women patients. *Id.* at 118. *See also, e.g., Doe v. Bolton*, 410 U.S. at188 (1973) (physicians who provide abortion have standing to assert privacy rights of women patients); *City of Akron*, 462 U.S. at 440 n.30 (finding that physician plaintiff had standing to raise the claims of his minor patients); *Planned Parenthood of Cent. N. J. v. Farmer*, 220 F.3d 127, 147 (3rd Cir. 2000) (holding that physician had standing to assert constitutional rights of his patients seeking abortions); *Planned Parenthood Ass'n of Kansas City, Mo. v. Ashcroft*, 655 F.2d 848, 860 n.17 (8th Cir. 1981) (same), *aff'd in part & rev'd in part on other grounds*, 462 U.S. 476 (1983); *Charles v. Carey*, 627 F.2d 772, 779 n.10 (7th Cir. 1980) (same); *Greco v. Orange Mem'l Hosp. Corp.*, 513 F.2d 873, 875 (5th Cir. 1975) (same). For the same reasons, the courts of appeals and district courts that have directly addressed the issue have uniformly held that reproductive health care facilities also have standing to assert the rights of their women patients seeking abortion services. *See, e.g., Planned Parenthood Ass'n of Cincinnati v. City of Cincinnati*, 822 F.2d 1390, 1396 (6th Cir. 1987); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 333 n.9 (5th Cir. Unit B 1981) (collecting cases); *Planned Parenthood of Minn. v. Citizens for Cmty. Action*, 558 F.2d 861, 865 n.3 (8th Cir. 1977); *Planned Parenthood Ass'n of the Atlanta Area v. Harris*, 670 F. Supp. 971, 981 n.14 (N.D. Ga. 1987) (collecting cases).

Indeed, the Court has consistently recognized third-party standing in other cases involving the right to privacy. *See Griswold v. Connecticut*, 381 U.S. 479, 481 (1965)

(Executive Director of Planned Parenthood and physician have standing to assert the privacy interests of married persons with whom they had professional relationship); *Eisenstadt v. Baird*, 405 U.S. 438, 443-46 (1972) (advocate of rights of persons to obtain contraceptives has standing to assert the privacy rights of those persons to obtain contraceptives); *Carey v. Population Servs. Int'l*, 431 U.S. 678, 682-83 (1977) (mail order contraceptives vendor has standing to assert privacy rights of "potential customers"). That is due not only to the desire to protect the decision to abort from public scrutiny, as identified in *Singleton*, but also the desire to avoid the risk of violence that sometimes attends the exercise of the right to abortion in the United States. Persistent and wide-ranging incidents of violence, including assaults, bombings, blockades, butyric acid attacks, stalking, attempted murder and murder have plagued abortion providers and patients for three decades. That violence, some of which was the product of organized campaigns, moved Congress to enact criminal and civil remedies in the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248.[15] These risks often make even individual

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[15] *See* S. Rep. No. 103-117 (1993), 1993 WL 286699, at *3 - *11 (detailing murder, attempted murders, arson, bombings, firebombings, chemical attacks, other vandalism, clinic blockades and threats of force at abortion clinics); H.R. Rep. No. 103-306 (1993) *reprinted in* 1994 U.S.C.C.A.N. 699 (same). The National Abortion Federation ("NAF") has tabulated incidents of violence and disruption against abortion providers from 1977 through July 2005. NAF reports that there have been more than 4400 incidents of violence (e.g., murder, attempted murder, bombing, arson, acid attacks, assaults), more than 700 clinic blockades, and in excess of 100,000 incidents of disruption of activities (e.g., bomb threats, hate mail, harassing phone calls, suspicious packages) directed against abortion providers during that period. *See* NAF, *NAF Violence and Disruption Statistics, at* http://www.prochoice.org/pubs_research/publications/downloads/about_abortion/violence_statistics.pdf (July 2005).

abortion providers hesitant to expose themselves by bringing a lawsuit and testifying on behalf of their patients.

Moreover, many women whose rights to privacy are most severely in jeopardy are unable to assert their rights. For example, the married woman who is regularly beaten by her husband may be unable to assert, even to her physician, the effects of a spousal notice statute on her, due to fear of reprisal.

The State's *amici* raise two additional arguments about the prudential limitations the Court has identified in third-party standing cases, relying upon *Tesmer v. Kowalski*, 543 U.S. 125, 125 S. Ct. 564 (2004). *See* Brief on N.H. Legislators as *Amicus Curiae* in Support of Petitioner ("N.H. Leg. Br."). First, they assert that physicians do not have the requisite "close relationship" with minors needing immediate abortions. (N.H. Leg. Br. at 15-16.) But, in *Tesmer* itself, the Court recognized that a sufficiently "close relationship" exists between a litigant and third-parties "when enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties' rights." *Tesmer*, 125 S. Ct. at 567-68 (quoting *Warth v. Seldin*, 422 U.S. 490, 510 (1975). This factor is obviously present here: it is the Respondents, and not their patients, against whom the parental consent statute would be enforced. This puts Respondents firmly in the same camp with the attorney who was accorded third-party standing to invoke the rights of his clients in *Department of Labor v. Triplett*, 494 U.S. 715 (1990), because he was subject to enforcement of the challenged statute regulating attorney's fees. *Id.* at 719-21. Indeed, a suit to vindicate women's privacy right to abortion is the paradigmatic case for third-party standing precisely because the physician and patient are both essential participants in the abortion decision as well as the implementation of that decision.

Second, relying on the same case, the legislators claim that minors face no hindrance to asserting their own interests in litigation, (*id.* at 17-19), arguing that young women can avoid the risk to their privacy rights that litigation threatens by bringing suit anonymously and that the possibility of mootness has been restricted by the doctrine of "capable of repetition, yet evading review." But both of those possibilities existed – and were remarked upon – when the Court decided *Singleton* and identified the loss of privacy and mootness as barriers to a woman's assertion of her own rights justifying a physician's third-party standing. The fact that, in a handful of reported federal cases challenging abortion restrictions, minors have participated anonymously (*see* N.H. Leg. Br. at 17 & n.2) hardly proves that most women, especially those in the throes of a medical crisis, will be undaunted by the prospect of commencing federal litigation to secure a constitutional right. *See supra* at n.5.

Finally, *amici*'s reliance on *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), to argue that the plaintiffs do not have standing is also misplaced. (*See* N.H. Leg. Br. at 7-8.) The New Hampshire legislators cite *Lujan* for the uncontroversial proposition that past exposure to illegal conduct does not necessarily indicate a need for injunctive relief in the absence of a likelihood of recurrence or continuing adverse effects. 504 U.S. at 564 (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). But in *Lujan*, the plaintiffs were using a "nexus" theory of standing by which they had claimed, *inter alia*, that they would suffer injury when they used portions of ecosystems *not affected* by the unlawful government action they challenged. 504 U.S. at 566. Moreover, the plaintiffs had failed to submit evidence that the adverse effects would actually occur again in the future. *Id.* at 564 & n.2. As Justice Kennedy notes in concurrence, the plaintiffs had not even claimed to have visited the unaffected sites since the unlawful activity began, nor had they shown that they would in fact return. *Id.* at 579-

80 (Kennedy, J. concurring). Thus, respondents had not "demonstrated a concrete injury." *Id.* (noting that even "nexus theory" of standing "in different circumstances" might support a claim to standing).

In this case, to the contrary, the injury is the very real threat of prosecution under a statute which Dr. Goldner has established he will need to violate to protect the health of his patients. Dr. Goldner is ready to provide emergency care to his patients whenever needed, and there is no genuine controversy that minors experience medical conditions that pose substantial risks of serious harm. That Dr. Goldner has not previously been prosecuted for providing abortions does not diminish the strength of his claim to relief from future prosecution under a law recently enacted. (*Cf* N.H. Leg. Br. at 9-11.)

CONCLUSION

For the foregoing reasons, the *amici* respectfully request that the Court uphold the lower court's decision and reject this effort to undermine constitutional protections for the right to choose abortion.

Respectfully submitted,

Sanford M. Cohen
(*Attorney of Record*)
Simon Heller
Priscilla Smith
Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, NY 10005
(917) 637-3600

Attorneys for Amici Curiae

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APPENDIX
INDIVIDUAL STATEMENTS OF INTEREST OF *AMICI CURIAE*

ABORTION ACCESS PROJECT

The Abortion Access Project is an organization of activists and health care providers seeking to increase awareness of abortion as a critical part of comprehensive reproductive health services, address the shortage of abortion providers, and ensure access to abortion for all women.

AMERICAN JEWISH CONGRESS

The American Jewish Congress is an organization of American Jews dedicated to the protection of the civil liberties of American Jews and all Americans. It has long supported a woman's right to choose whether to carry a pregnancy to term, and has opposed unnecessary and unjustified state restrictions on the exercise of that right.

ASIAN COMMUNITIES FOR REPRODUCTIVE JUSTICE

Asian Communities for Reproductive Justice (ACRJ) works toward the advancement of reproductive justice for Asian women and girls. We believe reproductive justice will be achieved when women and girls have the economic, social, and political power and resources to make healthy decisions about our bodies, sexuality and reproduction for ourselves, our families and our communities in all areas of our lives.

ASSOCIATION OF REPRODUCTIVE HEALTH PROFESSIONALS

Founded in 1963, the Association of Reproductive Health Professionals (ARHP) is a non-profit membership association composed of highly qualified and committed experts in reproductive health. Its members are professionals who provide reproductive health services and education, conduct reproductive health research, and influence reproductive health policy, and they include physicians, advanced practice clinicians (nurse practitioners, nurse midwives, and physician assistants), researchers, educators, pharmacists, and other professionals in reproductive health. ARHP fosters research and advocacy to improve reproductive health, and educates health care professionals, policy makers, the media, and the public.

ATLANTA WOMEN'S MEDICAL CENTER

The Atlanta Women's Medical Center is a Georgia State Licensed Ambulatory Surgery Center and has been serving the Atlanta metropolitan area for forty years. The Center provides women of diverse background first and second trimester abortion care, and enables these women to avoid unsafe or illegal alternatives that could endanger their lives.

CALIFORNIA WOMEN LAWYERS

California Women Lawyers (CWL) is a non-profit, umbrella organization for women's bar associations throughout the state of California. Chartered in 1974, CWL serves as a network that permits California's women attorneys, judges, law professors and law students to work together to achieve common goals, including the protection of civil rights of all individuals. CWL actively engages in the public policy debate concerning the rights of women and children and

prepares or joins others in presenting amicus briefs in cases affecting constitutional rights, especially those that have a special impact on women and children.

CENTER FOR REPRODUCTIVE RIGHTS

The Center for Reproductive Rights (the Center) is a national public interest law firm based in New York City dedicated to preserving and expanding reproductive rights in the United States and throughout the world. The Center's domestic and international programs engage in litigation, policy analysis, legal research, and public education seeking to achieve women's equality in society and ensure that all women have access to appropriate and freely chosen reproductive health services, including contraceptives. The Domestic Legal Program of the Center specializes in litigating reproductive rights cases throughout the United States and is currently lead or co-counsel in a majority of the reproductive rights litigation in the nation.

CHERRY HILL WOMEN'S CENTER

The Cherry Hill Women's Center is a New Jersey State Licensed Ambulatory Surgery Center and has been serving the communities of Southern New Jersey for over twenty-five years. The Center provides women of diverse background first and second trimester abortion care, and enables these women to avoid unsafe or illegal alternatives that could endanger their lives.

CHOICE USA

Choice USA mobilizes and provides ongoing support to the diverse, upcoming generation of leaders who promote and protect reproductive choice both now and in the future. We

are dedicated to the right of each person worldwide to decide when and if they will have sex, when and if they will be pregnant, and when and if they will have a child. In order to make those personal decisions, accurate information and safe, legal reproductive health services must be available to everyone.

FAMILY PLANNING ASSOCIATION OF MAINE

Founded 35 years ago as a private not-for-profit, the Family Planning Association of Maine (FPA) is a statewide organization that serves as the Title X/National Family Planning program grantee for the state of Maine, administers all state funds supporting contraceptive care for 34,000 low-income Maine women and teens. Through four sites, the FPA directly oversees services for 4,500 low-income patients and contracts for similar services through six delegate agencies for services to 28,500 women and teens. In addition, the Association provides first-trimester abortion services in Central and Southern Maine and operates the only site available for training physicians and residents interested in learning how to provide the service. The FPA also provides women's health orientation opportunities to medical students at the University of New England, the state's only medical school.

GUTTMACHER INSTITUTE

The Guttmacher Institute is an independent, nonprofit corporation that advances sexual and reproductive health in the United States and around the world through an interrelated program of research, policy analysis and public education. The Institute works to protect, expand and equalize access to information, services and rights that will enable women and men to avoid unplanned pregnancies, prevent and treat sexually transmitted infections, including

HIV, exercise the right to choose abortion, achieve healthy pregnancies and births and have healthy, satisfying sexual relationships.

HARTFORD GYN CENTER

The Hartford GYN Center is a Connecticut State Licensed Family Planning and Abortion Clinic. The Center has been serving the community in the Hartford area and beyond for over twenty years. The Center provides women of diverse background first and second trimester abortion care, and enables these women to avoid unsafe or illegal alternatives that could endanger their lives. The Center also provides routine gynecological care.

INSTITUTE FOR REPRODUCTIVE HEALTH ACCESS

The Institute for Reproductive Health Access works on increasing access to comprehensive reproductive health services. The Institute works across the nation to partner with state-based organizations to address obstacles women face when seeking to obtain family planning services, abortion care and other health care services.

LAW STUDENTS FOR CHOICE

Law Students for Choice represents over 1500 law students across the country working to increase curricula and professional training in reproductive rights law and advocacy on legal campuses nationwide. Law Students for Choice works on a grassroots basis at law schools in both the United States and Canada, sponsors national and regional educational events, provides internships in reproductive rights and the law, maintains a presence on the Internet, and

publishes a quarterly newsletter. Law Students for Choice is committed to educating, organizing, and supporting pro-choice law students to ensure that emerging legal advocates have the skills they need to successfully defend and expand reproductive rights.

MADRE

MADRE, a United States-based international women's human rights organization, has been working to defend the reproductive health and freedom of women around the world since 1983. Our 23,000 members in the United States and abroad support our understanding that any restriction on women's access to safe and legal abortion will be devastating to women's equality, health, and freedom. MADRE supports all efforts to defend reproductive health and rights as women's human rights.

MEDICAL STUDENTS FOR CHOICE

Medical Students for Choice represents almost 10,000 medical students and residents who are demanding a comprehensive medical education that includes abortion training. Medical Students for Choice works on a grassroots basis at medical schools and residency programs throughout North America, sponsors national and regional educational meetings, provides reproductive health clinical training externships, maintains a presence on the Internet, and publishes a quarterly newsletter. Medical Students for Choice is committed to ensuring that medical practitioners are prepared to provide their patients with the full range of reproductive health care choices.

NATIONAL ABORTION FEDERATION

The National Abortion Federation (NAF), a non-profit organization founded in 1977, is the professional association of abortion providers in North America. Its members include over 400 non-profit and private clinics, women's health centers, hospitals, and private physicians' offices in 47 states. NAF's members care for over half of the women who choose abortion each year in the United States, including minor patients facing health emergencies.

NATIONAL ASSOCIATION OF WOMEN LAWYERS

The National Association of Women Lawyers (NAWL), headquartered in Chicago, is more than 100 years old. It was the first and is the oldest women's bar association in the United States. Its members consist of individuals as well as professional associations. Part of NAWL's mission is to promote the welfare of women, children, and families in all aspects of society. Among NAWL's interests are economic justice, reproductive rights, and equal protection. NAWL supports equality for women and girls so that they may achieve their full potential. Given its interest in issues affecting women and families as a class, NAWL has participated as an *Amicus Curiae* in many courts of the United States, including the United States Supreme Court.

NATIONAL COALITION OF ABORTION PROVIDERS

The National Coalition of Abortion Providers (NCAP) is a nonprofit organization dedicated to helping our member clinics better meet the needs of their communities. Since 1990, NCAP has represented the political, business, and networking needs of nearly 150 independent abortion providers throughout the country. NCAP advocates for the

supportive relationship between providers and the women and men they serve. NCAP members have been innovative leaders in providing quality medical care. Abortion is one of the safest procedures performed today because of their skills, commitment, and understanding.

NATIONAL FAMILY PLANNING & REPRODUCTIVE HEALTH ASSOCIATION

The National Family Planning & Reproductive Health Association (NFPRHA) works to assure access to voluntary family planning and reproductive health care services and to support reproductive freedom for all. A national non-profit membership organization, NFPRHA represents clinicians, administrators, researchers, educators, advocates and providers in the family planning field who provide reproductive health care services at nearly 4,500 clinics to more than 5 million women annually.

NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH

The National Latina Institute for Reproductive Health (NLIRH) was founded in 1994 to empower Latinas to make informed reproductive health decisions. Latinas comprise an increasing percentage of women of reproductive age (15-49) in the continental United States, and Latinos are quickly becoming the nation's largest minority population. NLIRH's areas of programmatic focus include coalition building, education, communication, public policy, and advocacy.

NATIONAL NETWORK OF ABORTION FUNDS

The National Network of Abortion Funds (NNAF), a non-profit organization, is an affiliation of abortion funds

operating throughout the United States. The mission of NNAF is (1) to promote direct financial support for abortions to low-income women -- adults and minors – nationwide; and (2) to conduct grassroots and national organizing, advocacy, public education and policy work to ensure that those most in need -- low-income women, women of color, and young women -- have access to abortion and other basic reproductive health care.

NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES

The National Partnership for Women & Families is a non-partisan, non-profit advocacy group founded in 1971 that uses public education and advocacy to promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family. The National Partnership firmly believes that quality health care must include access to the full range of women's reproductive health services. As a result, the National Partnership has a long history of promoting and defending a woman's right to choose by filing amicus curiae briefs in major reproductive rights and health cases.

NATIONAL WOMEN'S LAW CENTER

The National Women's Law Center is a nonprofit legal advocacy organization that has been working since 1972 to advance and protect women's legal rights. The Center's primary goal is to ensure that public and private sector practices and policies better reflect the needs and rights of women. The fundamental right to abortion recognized in Roe v. Wade is of profound importance to the lives, health, and safety of women throughout the country. Because of the tremendous significance to women of the freedom to choose

whether to bear children, the National Women's Law Center seeks to preserve women's right to abortion.

NATIVE AMERICAN WOMEN'S HEALTH EDUCATION RESOURCE CENTER

The Native American Women's Health Education Resource Center (NAWHERC) works to improve the lives of Indigenous women by addressing their health, environmental, educational, and cultural rights, locally, nationally, and internationally. The traditional beliefs of Indigenous women include the belief "that the business of women is determined by women for women." Since its founding over fifteen years ago, NAWHERC has supported reproductive rights.

NORTHEAST WOMEN'S CENTER

The Northeast Women's Center is a Pennsylvania State Licensed Abortion Clinic and has been serving the community in the northeast section of Philadelphia for over twenty-five years. The Center provides women of diverse background first and second trimester abortion care, and enables these women to avoid unsafe or illegal alternatives that could endanger their lives.

PHILADELPHIA WOMEN'S CENTER

The Philadelphia Women's Center is a Pennsylvania State Licensed Abortion Clinic and has been serving the Philadelphia community since 1972. The Center provides women of diverse background first and second trimester abortion care, and enables these women to avoid unsafe or illegal alternatives that could endanger their lives.

PHYSICIANS FOR REPRODUCTIVE CHOICE AND HEALTH

Physicians for Reproductive Choice and Health (PRCH) is a national, physician-led, non-profit organization founded in 1992. PRCH represents more than 3,500 physicians of various disciplines, and non-physician supporters. PRCH's mission is to enable concerned physicians to take a more active and visible role in support of voluntary universal reproductive healthcare. PRCH is committed to ensuring that all people have the knowledge, equal access to quality services, and freedom of choice to make their own reproductive health care decisions.

PROKANDO

ProKanDo is a pro-woman, pro-choice political organization based in Kansas. We seek out, promote and raise money to support pro-choice candidates who are willing to serve at the state level and eventually at the national level. Additionally, we educate voters about candidates so they can make informed voting decisions that will protect their reproductive freedom. During the legislative session, ProKanDo lobbies the state legislature in support of bills that protect the reproductive rights of women, while working to defeat any harmful legislation that would potentially turn back the clock on women's rights.

SEXUALITY INFORMATION AND EDUCATION COUNCIL OF THE UNITED STATES

The Sexuality Information and Education Council of the United States (SIECUS) is a non-profit organization that has served as the national voice for social justice, sexual health and sexual rights for over forty years. SIECUS affirms that sexuality is a fundamental part of being human, one that is

worthy of dignity and respect and advocates for the right of all people to accurate information, comprehensive education about sexuality, and sexual health services.

WOMEN LAWYERS ASSOCIATION OF LOS ANGELES

Women Lawyers Association of Los Angeles (WLALA) is a nonprofit organization composed primarily of attorneys and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA places a high priority on preserving personal choice in abortion decisions. To further these goals, WLALA has joined amicus briefs in cases having a significant impact on women's rights. For example, in Catholic Charities v. Superior Court, WLALA joined in successfully urging the California Supreme Court to apply the Women's Contraceptive Pay Equity Act, which mandates that group and individual health insurance policies that include prescription drug benefits also include coverage for prescription contraceptives, to an employer like Catholic Charities.